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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,094	10/17/2003	Daniel Klees	210-031	9102

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EXAMINER

RAEVIS, ROBERT R

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 03/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NA

Office Action Summary

Application No.

10/687,094

Applicant(s)

KLEES ET AL.

Examiner

Robert R. Raevis

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election of Group I is acknowledged. Regarding the traversal, consider the following: As to p. 1, lines 8-9 from last; there is overlap of the two claims to the extent of mounting. As to p. 1, lines 2-5 from last; both claims including mounting. In addition, claim 15 is directed to sending pure sterilized water through the flow meter under test, while claim 16 is directed to sending conductive liquid through the flow meter under test. Thus, there is overlap to the extent of Bbr between the two groups, and claim 15 (Bsp) is more specific in the sense that it passes pure water (the "sp" portion of Bsp) through the meter of interest, and claim 16 (ABbr) is more specific in the sense that it passes conductive liquid (the A or ABbr) through the meter of interest. Restriction is Final.

Claims 9-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 9, "pure sterilized water *or* a source of a sterile conductive solution" (italics added, line 2) is indefinite, as the phrase incorporates two limitations that are not equivalents. (This is evident in the Restriction, which distinguishes between pure water and conductive solution.) This claim is directed to two distinct, inventions. Applicant may claim one invention in one claim, but not two. This claim is indefinite as it's unclear which of the two inventions Applicant is claiming. Applicant should delete "or a source of a sterile conductive solution".

As to claim 9, what does the term "manifold" (line 3) structurally mean?

Normally, the term implies a fluid structure with at least three apertures (at least one inlet, along with at least two outlets). However, this claim (and even the written specification) seems to suggest that a manifold may include a component that is connected to one "source" and one "meter" (line 3) (or possibly, one "source" and one "calibration cart", depending upon the means of "and/or" (line 4)). As a result, the claimed "manifold" is not a true manifold, but is just a fluid connection. Thus, the claimed "manifold" is not consistent with the normal meaning of the term.

As to claim 9, what is the "and/or" (line 4) relate to? Does it mean that the "rig" (line 1) can be either the structural combination of lines 2-4, or in the alternative, the structural combination of lines 5-9? (This is not likely, as lines 5-9 refer back to the "meter" of lines 2-4; but yet, the "and/or" is positioned to cause ambiguity.)

As to claim 9, the "and" (line 3 from last) is not consistent with the "or" (line 4). The "and" suggests that both the "flow meter" and "cart" are part of the claimed "rig"; yet, the "or" (line 4) suggests that the "flow meter" and "cart" are (somehow) alternatives. (Note that dependent claims 10 and 11 use of the term "or" reinforce the concept that claim 9's drain pipe is connected to either the "flow meter" (first occurrence of line 2 from last of claim 9) or the "flow meter calibration cart" (claim 9, last three lines), and that the last three lines of claim 9 is limited to a drain pipe connected to a (single) meter.)

As to claim 10, is the "a flow meter calibration cart" (underlining added) the same as the "cart" of claim 9, resulting in the same cart being claimed twice (aggregation of

parts)? Presently, this claim seems to be directed to two carts, including the “at least one flow meter calibration cart” (of claim 9) and the “a flow meter calibration cart” of claim 10, the carts having the same name. (Contrast this claim with claim 11, which employs “said flow meter” (underlining added, line 2) and “said flow meter calibration cart” (underlining added), which is fundamentally different.)

As to claim 12, is the “a flow meter” (underlining added, line 1) a flow meter in addition to that of claim 9, or is the same meter being claimed twice (aggregation of parts)?

Claims 9-14 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention. Evidence that claims 9-14 fail(s) to correspond in scope with that which applicant(s) regard as the invention can be found in the Election filed 3-15-06, where Applicant elected to “pure sterilized water” test, but did not provide any suitable explanation that the restriction was invalid. Applicant must understand that claim 9 is directed to two different possibilities (i.e. a rig that tests with “pure sterilized water” and a rig that tests with “sterile conductive solution”). Examination of only the former was conducted, and thus Applicant may not be permitted to tack on a different invention to the elected invention.

As to claim 16, what does “*according* to a source of pure sterilized water” (italics added) mean? How does the term “according” connect the “mounting...rig” (line 3) to the “to a source...water” (lines 3-4) phrases? Also, the word “meter” is misspelled.

Claims 9,11,12,13,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krause et al in view of Draus.

Krause et al teach a rig including: source 16 of water, manifold 54/58a/58b connected to the source 16, flow meter M connected to the source via the manifold, and drain pipe 86a-86f connected to the flow meter.

Krause does not call the water "pure sterilized" water.

As to claims 9,12, it would have been obvious to utilize pure water in a flow meter calibration because Draus teaches use of "clean water" (col. 3, line 15) to accurately calibrate flow meters in a consistent manner.

As to claim 13, Krause's provers 22-32 are suggestive of any meter to calibrate, suggestive of use of a weighing tank that (even) permits for more measurements.

As to claim 11, provers 22-32 may be called a calibrated reference flow meter, as they are used to calibrate a flow meter.

As to claim 14, note that Krause teaches use of a "predetermined volumes of liquid" (col. 2, line 30; col. 8, lines 41-42) for calibration. Such fluid is supplied through valve 56 and/or 60.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Draus.

Davis teaches (col. 2, lines 17-27; Figure 1) a method to calibrate a meter 12, including: mounting the meter 12 to a calibration system (14,16); sending "Clean water"

(col. 3, line 15) through the meter; and directing the water that passed through the meter to a tank (col. 5, lines 13-15).

As to claim 15, it would have been obvious to utilize pure water in a flow meter calibration because Draus teaches use of "clean water" (col. 3, line 15) to accurately calibrate flow meters in a consistent manner.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krause et al in view of Draus as applied to claim 9 above, and further in view of De Boom et al.

As to claims 3 and 7/3, it would have been obvious to employ a "calibrated reference flow meter" in place of Krause's provers 22-32 because De Boom et al teach use of flow meters 112 to calibrate a meter under test that is fluidly connected in series. De Boom's meters would allow for a plurality of flow measurements for comparison with the meter under test.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert R. Raemis whose telephone number is 703-305-4919. The examiner can normally be reached on Monday to Friday from 6:30am to 4:00pm. The fax phone number for the organization where this application or proceeding is assigned is 703-308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4900.

Rowe

RAEVI)